IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.102 OF 2005

Vishal S/o. Vithal Shelke .. Appellant.

Versus

The State of Maharashtra .. Respondent.

Shri.A.S.Gaikwad for the appellant.

Shri.S.S.Pednekar, A.P.P. for the State.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 20/11/2006.

DATE OF PRONOUNCEMENT OF THE JUDGEMENT : 23/02/2007.

JUDGEMENT : -

1. This Criminal Appeal is directed against the conviction and sentence of the appellant by the Additional Sessions Judge, Mumbai in Sessions Case No.1206 of 1998. By the judgement under appeal delivered on 18th June, 2004, the Additional Sessions Judge, Greater Bombay has held that the appellant is guilty of the offence punishable u/s.307 of I.P.C. He sentenced him to suffer R.I. for five years and to pay fine of Rs.500/-. In

default of payment of fine, further R.I. for six months was awarded.

2. The appellant is also held guilty of offence punishable u/s.452 of I.P.C. and sentenced to suffer R.I. for three years and to pay fine of Rs.500/-. In default, he was to undergo R.I. for six months.

3. The appellant is held not guilty of offence punishable u/s.324 of I.P.C. and is acquitted. The substantive sentences were directed to run concurrently.

4. C.R.No.402 of 1997 was lodged by the victim-girl Kalpana Babaji Joshi. The same was lodged at R.A.K. Marg Police Station. The allegation is that on 29th December, 1997 at about 4.30 p.m. in the premises which are occupied by the family of the victim, a house trespass was committed by the appellant-accused. He entered the house of Kalpana after preparing himself for an assault on her. He assaulted her by means of chopper and caused injury on her person. The girl has studied upto 10th standard. She was residing with her parents and one brother. She was acquainted with the accused one year prior to the incident. He used to meet her and was insisting that she

marries him. She refused his proposal on the ground that it is not consented by her parents. Moreover, she was a minor. Despite this rejection, he was repeatedly tried to contact her and was looking for every opportunity to meet her. On 29th December, 1997 at about 4.30 p.m. she alongwith her mother (P.W.1) were at her residence. Her brother Rajendra had been to their neighbour. At that time, accused all of a sudden entered the house of complainant and bolted the door from inside. He took out the chopper which was concealed below his shirt and told Kalpana in a threatening tone that she should marry him, otherwise, he will kill her. She again refused his proposal. Therefore, he got angry and assaulted her with the chopper. In order to save herself, she concealed herself behind her mother. However, he pushed her mother and gave blow on backside of her mother by chopper. Thereafter, he started giving blows on her person. However, she was avoiding those blows. Some of the blows were hit on her neck. She sustained bleeding injuries on her neck. She made hue and cry. Noticing the hue and cry, her brother started knocking the door from outside loudly. However, as the door was bolted from inside, it was difficult for him to enter into the house. Rajendra (brother) saw Kalpana from the window in the injured

condition. In order to assist Kalpana, he went in the balcony of neighbour Kadam and entered the balcony of his house from the balcony of neighbour. At that time, Kalpana removed the bolt and ran away in order to save her life and went in the house of neighbour. Accused chased her. However, as her brother came from behind in order to catch hold the accused and several persons started gathering, accused ran away from the said place. Kalpana along with her mother were taken to K.E.M. hospital and thereafter, she lodged F.I.R. (Ex.26). At that time, Medical Officer endorsed (Ex.26-A) that Kalpana was in a position to give statement.

5. That is how, C.R. came to be registered. After investigations were complete, a chargesheet was filed in the Court of Metropolitan Magistrate at Dadar, Mumbai. As the offence was exclusively triable by the Court of Sessions, the Metropolitan Magistrate committed the case to the Sessions Court on 9th October, 1998.

6. The learned Additional Sessions Judge framed the charges which were read over and explained to the accused. The appellant pleaded not guilty to the same and claimed to be tried.

7. The prosecution examined about nine witnesses. Several documents were exhibited including the F.I.R., the Report of the Medical Officer and the chemical analyst. P.W.1 is the mother of Kalpana. She points out in her deposition that she resides at the premises at Naigaon. The victim is her only daughter and she has a son by name Rajendra. At the relevant time, the victim was in 9th standard. She used to attend the school from 7.00 a.m. to 1.00 p.m.

8. Her mother (P.W.1) stated that on the relevant date, she was at home. The victim was also at home. The victim and her mother were watching TV. The father of the victim and her brother were not in the house. The mother's version is that when the son left the house, he bolted the main door from outside. The appellant-accused opened the door from outside and entered the house. When he entered the house, he bolted the main door from inside. P.W.1 states that the appellant used to follow the victim on the road. On one occassion, he obstructed her on the road. The appellant used to say that he loves the victim and that she should marry him. Police complaints were lodged against the appellant in regard to such behaviour.

9. On the relevant date, after entering the house and bolting it from inside, the appellant assaulted P.W.1. The victim told the appellant that he should not assault her mother. The appellant pushed the mother aside and took out a chopper and assaulted Kalpana near her throat. The mother and daughter were shouting and at that time, the son arrived. As the door was bolted from inside, the son Rajendra could not enter the house. He entered the house of the neighbour and through the gallery of the adjoining premises, he managed to enter the victim's house. In the meanwhile, the appellant managed to open the main door and ran away. The chappals of the appellant remained in the house. The victim also went out of the house to save herself and entered one of the neighbour's room. The appellant followed the victim and entered the house of the neighbour as well. He pulled her hair and thereafter ran away. The neighbour also closed the door of his house in order to protect the victim. Thereafter, P.W.1 states that the victim was admitted to K.E.M. Hospital.

10. P.W.1 also identified the weapon, namely, chopper.

11. In her cross examination, several suggestions were given to her. Firstly, it was suggested that the appellant was known to the family and was visiting their house and sometimes having food with them. A suggestion was given that the appellant was friendly with the father of the victim and was providing liquor to him. P.W.1 has admitted that the appellant came to their house on 2 or 3 occassions. The appellant showed a photograph of himself and the victim to P.W.1.

12. P.W.1 admits that Kalpana had gone to Aurangabad and visited the sister of the accused residing there. She denied the suggestion that even the father of the victim was there at Aurangabad. She denied that at Aurangabad, sister of the accused and her husband presented the victim with a gold chain. A suggestion was given that the father of the victim had agreed to perform the marriage of the victim and the appellant after one year. A suggestion was also given to P.W.1 that victim and the appellant were going around so also the victim was flirting with 2-3 boys.

13. Since much is made of the omission by P.W.1 with

regard to the description of the chopper, it is necessary to reproduce that portion of her testimony.

> "I had stated to the police the description of the chopper. It is not mentioned in my statement. I cannot assign any reason for the same."

14. The second omission i.e. pointed out is in regard to the door being bolted from outside by the son. In this behalf, in the cross examination, she states thus : -

> "I had not stated to the police that my son Rajendra had bolted the entrance door from outside."

15. It was also pointed out to P.W.1 that there is no reference to the appellant pulling the hair of the victim in the statement of P.W.1 to the police. P.W.1 has admitted that this is not so mentioned.

16. Thereafter, several suggestions were given to her with regard to the visit of the appellant on the relevant date and leaving his chappals there. These suggestions

are denied. It is also admitted by P.W.1 that father of the victim and her husband is serving in police Department, but she denied the suggestion that she was falsely implicating the appellant.

17. P.W.2 is one Sanjay Govind Joshi, who is the neighbour. He has deposed that he resides in Naigaon police quarters. The room where the incident took place is next to his residence. He has given proper description of the premises in which the accident took place. Since, he was residing in the vicinity, he was requested to act as a Panch. He and one Kadam acted as Panch. He has spoken about the articles lying in the room of the victim so also blood stains on the wall. In other words, he has given an account of the scene of offence and the articles which were seized under the Panchanama.

18. His cross examination reveals that the only suggestion and question put to him is with regard to the recovery of certain articles like chappals. He denied the suggestion that the Panchnama was prepared at the police station and his signature was obtained lateron.

19. P.W.3 is one Aruna Arvind Kadam. She resides next

to the room of the victim. In other words, she is next door neighbour. She has deposed that she is aware that the victim's name was Kalpana and one person by name Vishal Shelke (the appellant herein) used to visit the house of the victim. She has stated that she knew the victim. She has deposed about the incident that occurred on 29th December, 1997. She has given all details. She has denied the suggestions put to her.

20. P.W.4 is one Sonali Ravindra Parikh. She knows the victim because the victim was studying alongwith her prior to her marriage. P.W.4 was studying at the same institution/school where the victim was studying. She has specifically stated in her deposition that one day, she and the victim were going to attend the office of a cassette manufacturing company. The appellant accused met them on the way. The victim told P.W.4 that the name of the accused was Vishal. After some days, appellant met P.W.4 when she was alone and according to her, a day prior to the assault on the victim. She has spoken about a threat by the appellant.

21. The only suggestion given to her in the cross examination is that the victim had gone to Aurangabad

alongwith the accused and stayed with him for few days. P.W.4 answers that suggestion/question by stating that she is not aware of the same. She denies other suggestions also.

22. P.W.5, Balu, is a Panch witness, who had turned hostile.

23. P.W.6 is the officer attached to R.A.K. Marg police station. He took up the investigations in this case and has deposed that he recorded statement of witnesses and arrested the accused. He has spoken about the manner in which the arrest took place. The learned counsel appearing for the appellant has relied upon Para 3 of his deposition which is reproduced hereinbelow : -

> "3: The accused thereafter led us a room situated at Manpada Kandivali (East). There was nobody in the said room. It was bolted from outside. There was no lock. The accused had taken one pant, one shirt and one knife which was lying besides one of the walls of the said room. There were blood stains on both the clothes. The

clothes and knife were seized by me under the panchanama in the presence of panchas. Panchanama now shown to me bears my signature. It is in my handwriting. It is Ex.19. I can identify the clothes and knife seized by me."

24. He has in his cross examination admitted that the articles were not sent for chemical analysis immediately after the recovery. But he says that he is unable to give reasons for the same.

25. P.W.7 is the Registrar/Doctor attached to K.E.M. Hospital. He has spoken about the injuries on the victim’s person and has proved the entries in the documents/register of indoor papers pertaining to the victim/patient. In his cross examination, he has clearly stated that the injuries are not likely to be caused if somebody falls on the sharp object. The presence of tilling in the injuries indicates that they were caused by a sharp weapon. The injuries are fresh and might have been caused within one or two hours before he examined the patient. Thus, he has proved the injury certificate and other related documents so also spoken about the nature of

the injuries and the weapon that may have been used for inflicting the same. This witness was recalled. He has proved a certificate/endorsement certifying that the victim was fully conscious. In his cross examination, he admits that the mental condition of the patient was not good.

26. The other witnesses are not very material. P.W.9 is an officer attached to R.A.K.Marg police station. His deposition was recorded after the victim had expired. However, he has spoken about the incident and has also stated that he went to the hospital to record the statement of the victim. He also speaks about the spot panchanama. He stated that it was carried out in his presence. Paras 5 and 6 of his deposition are relied upon and are reproduced hereinbelow : -

> "5: Thereafter, I visited the place of incident and prepared spot panchanama. Spot panchanama Ex.8 now shown to me bears my signature and signatures of panchas. The contents are true and correct. I recorded statements of mother and brother of complainant and neighbourers. During

spot panchanama I collected and seized chappal of accd. blood stained salvar of complainant. I also put scrapping of the wall as there were blood stains on the wall.

6: I seized blood stained clothes on person of complainant i.e. kurta, salwar and brasier. Panchanama now shown to me bears my signature and signatures of both panchas. It is in my handwriting. The contents are true and correct. It is at Ex.27. Those clothes were not sealed as they were wet and after drying on 30th December, 1997 i.e. on next day I again prepared panchanama and seized and sealed the dried clothes of injured. The panchanama now shown to me is in my handwriting. It bears my signature and signatures of both panchas. The contents are true and correct. It is at Ex.28."

27. He has proved the forwarding letter in as much as vide this letter, the articles and clothes were forwarded

for chemical analysis. He has also deposed that he collected the C.A. report which is already exhibited. He, however, produced C.A. report of the blood group of the complainant.

28. His testimony is sought to be shaken by suggesting to him that the victim and the appellant accused were known to each other even prior to the incident. He denied that suggestion and also denied the further suggestion that the incident occurred becuase the appellant and the victim were to be married. He states that he is unaware of the fact whether the victim was friendly or had an affair with other boys.

29. This is the oral evidence on record. During the course of recording of the same, several documents have been taken on record and are exhibited accordingly.

30. Shri.Gaikwad appearing for the appellant submits that the victim was residing at Naigaon police quarters in room No.17, first floor. She was residing with her father, mother and brother Rajendra. Her age was about 15 years. She was acquainted with the appellant. The victim’s father was working in police deparment. After

inviting my attention to the FIR and the narration of the incident, Shri.Gaikwad submits that the brother of the victim, who was present has not been examined. It is the brother, who took the victim to the hospital and his non-examination is, therefore, fatal. Further, the injured eye witness/victim Kalpana expired during trial and, therefore, was not examined. Shri.Gaikwad has invited my attention to the mother's deposition and has contended that there are several contradictions therein. He submits that the incident as narrated by the mother and by the victim in the FIR, is at variance. He submits that in the FIR, there is complete silence about the victim and the mother being the only one present in the house and the father and the brother being absent there from. He submits that in the FIR, it is not stated by the victim that her brother while leaving the house had bolted the main door from outside. Shri.Gaikwad also states that in the FIR, there is complete silence with regard to the appellant accused opening the door from outside and entering the house of the victim and thereafter bolting the door from inside. He submits that these are not trivial or minor omissions but are material contradictions and clear inconsistencies. He has invited my attention to the cross examination of the mother (P.W.1) so also the

contradictions therein. He has invited my attention to the fact that the mother's statement is also recorded at the hospital but the same was not treated as FIR. He submits that the earlier version/statement has no importance in criminal trial. He submits that the incident must be viewed in the backdrop of the friendly relations of the appellant and the victim. He submits that another relevant aspect of the matter is that father of the victim is working at R.A.K.Marg police station. It was easy for him, therefore, to implicate the appellant in a false case as he was unhappy with his friendly relations with his daughter.

31. He submits that the Doctor/Medical Officer treating the victim was not examined and his non examination in so far as the injuries sustained by the mother P.W.1, is fatal. In other words, the submission is that even P.W.1 sustained injuries in the assault but the prosecution has not taken any care to bring on record the nature of the injuries sustained by her. The prosecution has not examined the Medical Officer who attended P.W.1. Shri.Gaikwad has criticised the prosecution for examining the neighbourers and friends of the family. He submits that all witnesses examined are interested in as much as

they were supporting the victim's family. Only such persons have been examined. Thus, the accused is framed in false case. Considering the totality of the circumstances brought on record so also the infirmities in the vital documents such as C.A. reports etc., the benefit of doubt must be given to the appellant and he deserves to be acquitted.

32. Shri.Gaikwad has placed reliance upon a Division Bench decision of this Court in **Namdeo Bana Barde v/s. State of Maharashtra reported in 1999 ALL MR (Cri.) 668.** He has relied upon this decision in support of his plea that the evidence of recovery in this case is not at all reliable. The recovery is after considerable delay. He has also relied upon the Division Bench judgement of the Karnataka High Court in **Fellix-Joannas v/s. State of Karnataka** reported in 1998 Cri.L.J. 2479(1) to show that voluntary statement which is not signed cannot be used against the accused so also, recovery of blood stained clothes without any proof about they being sealed before they were sent for the chemical analysis is not acceptable in law. Therefore, the evidence of recovery has to be excluded from scrutiny and consideration. He places reliance upon a decision rendered by the Division Bench of

this Court in **State of Maharashtra v/s. Prabhu Gade** reported in 1995 Crime Cr.LJ 1432. Thus, he has relied upon the judgements where a view has been taken that if there is a doubt about the recovery, then, the evidence in that behalf must be excluded from consideration altogether. Shri.Gaikwad has also placed reliance upon a Single Judge decision of this Court in **Krishna K.Puthan & Ors. v/s. Krishna B. Jadhav & Ors.** reported in 1986 (3) Crimes 223.

33. On the other hand, Shri.Pednekar, learned A.P.P. submits that the judgement of the trial court is well considered and well reasoned. It has taken into account all aspects of the case. There are enough materials on record by which it can be said that the prosecution has proved the charge against the appellant. He submits that P.W.1 has identified two chappals of the accused. The blood stains were found on the wall. P.W.3 had identified the accused, who used to visit the room of the victim. Even P.W.4, Sonali has confirmed the acquaintance of the appellant and that of the victim. The panch witnesses have also spoken about the recoveries in details. He submits that contentions of Shri.Gaikwad that recovery cannot be relied upon, as there is no proper seizure, are untenable and ought not be accepted.

34. Before proceeding further, it would be proper to note that Shri.Gaikwad had contended that the recovery in this case cannot be relied upon. He submits that there is no proper seizure in this case. Assuming that there is a seizure, there is no explanation for the delay in sending the seized articles to the Chemical Analyst. In this behalf, he has invited my attention to the Panchanama which bears the date and time of seizure (Exh.18). He then relies upon the communication/letter (Exh.20) dated 2nd June, 1998. He submits that if the seizure is of 10th January, 1998, then the date of receipt of the seized articles/parcels on 12th February, 1998 is totally unexplained and therefore, benefit should be given to the accused. In this behalf, he has invited my attention to Exh.30 and has contended that the discrepancies in the dates mentioned are unexplained. In any event, the delay of 29 days is fatal.

35. His other argument is that once the investigation has commenced, the statement of the injured cannot be treated as FIR and in that behalf, he has invited my attention to the deposition of P.W.7. He submits that the FIR in this case is dated 30th December, 1997. The FIR

was registered on the basis of the statement of the victim by P.W.9 at the hospital (FIR Exh.26) but the investigation had already commenced by then. It is a clear case where the appellant and the informant were known to each other. There was a love affair. Informant's father is a police officer. In such circumstances, both the FIRs as well as the recovery statement cannot be relied upon.

36. Shri.Gaikwad has also contended that the sealing of the articles is not in accordance with law. He has invited my attention to the Sec.27 of the Evidence Act and the Memorandum Panchanama (Exh.18). He submits that when the articles were recovered, Panchas have not given details about the seizure and sealing. Therefore, on these grounds alone, the appellant deserves to be acquitted.

37. These arguments are contended by learned A.P.P. He submits that as far as the present case is concerned, the technical breaches or lapses would not in any manner assist the appellant when the evidence on record shows that he is guilty. Further, in Para 29 of the judgement, the learned Judge has rightly relied upon the deposition

of the I.O. That apart, the blood which was detected on the shirt of the accused was of ‘B’ group. That is the blood group of the complainant/victim. The burden was, therefore, upon the appellant accused to demonstrate as to how these blood stains were detected on his shirt. This circumstance was explained to him and put to him while recording his statement u/s.313 of Cr.P.C. He was unable to give any explanation. In such circumstances, he cannot rely upon the omissions or breaches, if any, while effecting the seizure and forwarding the articles to the Chemical Analyst or the recovery in this case. All the judgements relied upon are clearly distinguishable. The appeal, therefore, be dismissed.

38. For properly appreciating the rival contentions and for deciding as to whether the judgement and order of conviction and sentence imposed by the Trial Court requires interference in this Court’s appellate jurisdiction, it is necessary to note some aspects of the matter about which there is no dispute. That is the only point arising for my decision.

39. The victim was residing at the relevant time at Naigaon police quarters alongwith her parents. She was

residing in room No.17. The appellant had tried to meet the victim on earlier occassions and in fact knew her place of residence. This is not in dispute. The incident, namely, the appellant entering the room of the victim and assaulting her was proved by the prosecution by examining witnesses other than the victim. The victim could not be examined because according to prosecution as soon as the appellant before me was released on bail in the present sessions case, he committed murder of the victim. One need not go into this aspect in detail because whether the murder was committed by appellant is not of much consequence. The victim was admittedly dead when the trial in this case commenced before the Trial Court.

40. However, much has been made of the inconsistencies and contradiction in the deposition of P.W.1, who is the mother of the victim. She is an eye witness. She has stated that she was also injured. Her testimony is carefully scrutinised by me. I need not reproduce the same in details as a reference to the same is made in the foregoing paragraphs already. However, her deposition shows that she has seen the appellant earlier also. Her deposition shows that when the assault took place, she was

present. The assault took place in the room/house of the father of the victim. She has clearly deposed about the presence of the accused. She has also clearly stated that the accused was armed and after the assault, he ran away but left his chappals behind. Her deposition shows that even the victim went out of the room and entered her neighbour's house but she was followed by the appellant-accused there. P.W.1 has identified the clothes on the person of the victim which includes the pair of chappals.

41. In her cross examination, several suggestions were given to her but she has denied the same. She has spoken about the visits of the appellant and the victim. She has also admitted that the appellant knew the victim and had met her earlier. She has denied the suggestions with regard to the character of the victim. About the omissions that appeared, according to the accused, in the statement made to the police and her deposition before the Court, although, P.W.1 says that she could not assign any reason for the same, in my view, these omissions are not such as would completely falsify her testimony. The testimony will have to be read as a whole. If the evidence is read as a whole, then it is clear that the

incident and assault is not denied at all. Rather, para 7 of her deposition and the suggestions put to the witness by the appellant's advocate would prove the fact that the appellant visited the room of the victim. That is not denied at all. In such circumstances, I am of the opinion that the learned Judge was right in relying upon the testimony of P.W.1. The reasons which are assigned by the learned Judge in Para 27 of the impugned judgement and order are cogent and satisfactory. The same are based upon a reading of the deposition of P.W.1 in its entirety. I agree with Shri.Pednekar that the omissions are not fatal. They do not affect the prosecution case adversely. The testimony is not falsified because the discrepancies are not material. In any event, the version of P.W.1 is corroborated by other materials. The assault is undisputed. The appellant went after the victim and knowing that her response was not encouraging, assaulted her by a sharp aged weapon (chopper) when she was at her house with her mother.

42. The learned Judge has also found that there is enough corroboration to the testimony of the sole eye witness P.W.1. In this behalf, reference can usefully be made to the deposition of P.W.3. She has also stated that

the victim resides in room No.17 and the appellant used to visit the house of the victim. This witness is a neighbour residing next door to the victim's family. She has deposed about the incident and clearly stated that she could hear shouts from the adjoining room. She also deposed that daughter/victim entered her room and that point of time, her body was stained with blood. The mother of the victim followed her. She has denied all suggestions. She has deposed that the appellant was the person visiting the house.

43. If further corroboration is necessary, then, the friend of the victim, P.W.4's testimony is also relevant. She has spoken very clearly that the appellant was a person, who had spoken to them on way to a cassette manufacturing company. She was told by the victim that the appellant's name is Vishal. P.W. 4 has spoken about the another incident where the appellant met her when she was alone. That P.W.4 and the victim were studying together is not disputed. Even this witness's testimony is not shaken in the cross-examination.

44. That one of the panch witnesses have been declared hostile is not of much consequence when other evidence is

trustworthy and reliable. The contents of the FIR are used only to corroborate the evidence in the facts of this case. They have been used to corroborate the version of P.W.1, who is the eye witness and mother of the victim. The chemical analyst's report and the report with regard to grouping of the blood shows that the blood on the shirt of the accused was of 'B' blood group. As per the C.A. report, the blood group of the victim is 'B' and was detected on the clothes of the victim and the same blood group matched with the blood stains detected on the shirt of the appellant. The clothes on the person of the appellant were seized. The I.O., who has prepared Memorandum and recovdery panchanama has stated that accused made a voluntary statement. Regarding sealing and production of clothes on person and weapon of the assault, although the panch witness was declared hostile, the I.O.'s testimony has been relied upon. Further, it is worthwhile noticing that P.W.2, who is the other panch witness, has deposed as under : -

> "1: On 29/12/1997, I was in police service and I was posted at Yellow gate Police Station as Police Constable.

2. The occurrence covered by this case took place in a room close to my residence. On 29/12/1997 I returned to my home at about 7.00 p.m. Since, I came to know about the occurrence I went to the said spot. The said spot is at room No.17, first floor, ‘B’ block, Police line, Naigaum, Mumbai-15. P.S.I. Mr.Patil requested persons in nearby houses to act as a panch, however, nobody showed willingness. I was asked to act as panch and I accepted. Alongwith me one more person by name Kadam acted as a panch. I observed a pair of chappals and one salwar lying on the Sofa. Blood was found on those articles. I also observed one wooden Devhara affixed to the wall and below the said Devhara blood had spill over the wall. The panchanama of scene of offence was conducted. The pair of chappals and the salwar was taken charge of an seized under panchanama by wrapping and sealing. Blood scrapping were also taken charge of under panchanama. The

panchanama was scribed. It was read out to me and my signature as well as signature of the other panch was obtained on it. (shown panchanama dtd.29/12/1997) This is the same panchanama about which I have mentioned. (The witness points out at two sets of signatures. One at page No.2 and one at page No.3). The signatures at Sr.No.1 in both the places is of mine and signatures at Sr.No.2 are that of the co-panch Mr.Kadam. The panchanama is taken on record and marked as Exhibit 8. I will be able to identify the pair of chappal and the salwar if shown to me. (shown Article 12 - pair of chappals). These chappals were taken charge of under panchanama (shown label X-8 for identification). This is the label which was affixed on the packet. It bears my signature as also the signature of co-panch. It is marked as Exhibit 9. I now say that certain clothes were taken charge of under panchanama. I will not be able to identify the said clothes which

were taken charge of under panchanama. (shown label X-8 for identification). This is the same label which bears my signature and the signature of co-panch. It is marked as Exhibit-10 (shown X-7 for identification). This is the same label which bears my signature and the signature of co-panchas. It is marked as Exh.11."

45. In these circumstances, it cannot be said that the seizure is vitiated as contended by Shri.Gaikwad. In the peculiar facts of this case and when the witnesses have clearly deposed about the manner in which the articles were seized, wrapped and sealed, in my view, it cannot be said that no reliance could be placed on the recovery as also the seizure. Mr.Gaikwad’s arguments on this point are largely based upon the acquittal of the appellant by this Court from the charge of murder of the victim. In that case, the recovery was held to be doubtful and untrustworthy considering the materials placed before this Court. All decisions relied upon by Shri.Gaikwad on the issue of recovery were, therefore, held to be applicable there.

46. The learned Judge has in Para 32 and 33 of the impugned judgement and order relied upon the testimony of P.W.3 so also that of the Medical Officer (P.W.7). The learned Judge has committed no error in relying upon the testimony of the Medical Officer, who has proved the injury certificate. The nature of the injuries as set out therein clearly go to show that they were caused by a sharp edged weapon. The learned Judge, in addition to the voluntary statement/disclosure by the appellant, has relied upon the medical record which clearly establishes that the assault was by chopper. The chopper has been recovered at the instance of the appellant. The appellant, is thus, guilty of the offence alleged. The prosecution has proved the charges beyond reasonable doubt. Therefore, no question of granting any benefit of doubt arises in the facts of this case. It is a case of a helpless minor victim falling a prey to the advances of the appellant. He is not falsely implicated as contended. Hence, I find no substance in the contentions raised on behalf of the appellant.

47. From a perusal of the depositions which have been referred to in the foregoing paragraphs and reading of the impugned judgement, I am of the view that the judgement of

the learned Additional Sessions Judge does not call for any interference in my appellate jurisdiction. The only point arising for my determination is answered in the negative for the above reasons.

48. In this behalf, the powers conferred upon the Appellate Court under Cr.P.C. are well defined and the ambit of scope therein is subject matter of several decisions of the Supreme Court. In the case of **Harijana Thirupala and others v/s.Public Prosecutor, High Court, A.P., Hyderabad** reported in AIR 2002 S.C. 2821, the Hon'ble Supreme Court has observed thus : -

> "11: In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where

the Court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the Court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the Court must be integrated, not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the Court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added

that ultimately and finally the decision in every case depends upon the facts of each case."

49. Applying the above settled principles to the facts and circumstances of the present case, I am of the view that the impugned judgement being based upon proper appreciation and appraisal of the evidence on record and the manner of the same being not shown to be contrary to established norms, then, the judgement does not require any interference. In other words, the appreciation and appraisal of the evidence on record being consistent with the above reproduced principles, the conclusion arrived at by the learned Additional Sessions Judge who had the opportunity to observe the demeanour of witnesses cannot be said to be vitiated in any manner nor can be termed as perverse.

50. Even on the quantum of sentence, I am of the view that the learned Judge has applied correct principles and the sentence imposed by him cannot be said to be disproportionate or shocking the judicial conscience of this Court. The learned Judge has consistent with the materials produced imposed a sentence as above on the

appellant. He has taken into consideration the gravity and seriousness of the crime, the role of the appellant accused, his age and status and thereafter imposed the sentence.

51. Therefore, even with regard to the quantum of sentence, there is no case made out for any modification or interference.

52. In the result, the impugned judgement and order of the conviction and sentence is upheld. The appeal stands dismissed.

(S.C.Dharmadhikari, J.)